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COMPLIANCE RULING

In the matter of Norfolk State University
Ruling Number 2021-5151
September 1, 2020

Norfolk State University (the “university” or the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s August 18, 2020 dismissal grievance¹ was timely initiated.

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.² Because dismissal grievances are initiated directly with EDR,³ an agency is essentially unable to follow this process as outlined. The university has therefore requested a ruling regarding the grievant’s alleged initiation noncompliance.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.⁴ When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.⁵ Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.”⁶

In this case, the event that forms the basis of the grievance is the grievant’s termination via the issuance of a Group II Written Notice on July 15, 2020.⁷ The university’s cover letter for the

¹ Although the grievance is dated August 15, 2020, the grievant did not email it to EDR until August 18. EDR therefore considers the grievance to have been initiated on August 18, despite the August 15 date on the form.

² *Grievance Procedure Manual* § 2.4.

³ *Id.* § 2.5.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

⁵ E.g., EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

⁶ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

⁷ The university states that the grievant had a prior active Group II Written Notice from January 2019 and was terminated due to his accumulation of disciplinary action. See DHRM Policy 1.60, *Standards of Conduct*, at 9 (stating that the issuance of “[a] second active Group II Notice normally should result in termination”).

Written Notice states that the document was hand-delivered to the grievant, a fact confirmed by the grievant's signature on the Written Notice form, dated July 15. The grievant emailed a dismissal grievance challenging the disciplinary action and his termination to EDR on August 18. Because the grievant received the Written Notice on July 15, he should have initiated the grievance within 30 days, *i.e.*, no later than August 14. He did not initiate the grievance until August 18, and thus it is untimely.

As just cause for his late filing, the grievant argues that the university did not give him a copy of the dismissal grievance form to submit to EDR or allow him to complete the form when he was terminated on July 15. The grievant also argues that he believes he initiated the grievance process when he told the university that he wanted to challenge his termination. However, an employee's expression of their intent to file a grievance is not sufficient to initiate a grievance. The grievance procedure states that "[a]n employee must initiate a grievance on a fully completed 'Grievance Form A.'"⁸ Though we are sympathetic to the grievant's concerns, EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁹ A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. For these reasons, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating his grievance.

Accordingly, EDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.¹⁰

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⁸ *Grievance Procedure Manual* § 2.4.

⁹ *See, e.g.*, EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2019-4643

¹⁰ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).